



Civil Rights Department

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CIVIL RIGHTS COUNCIL

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Explanatory Statement

1. Department and Council Name Change

On June 30, 2022, Governor Newsom signed SB 189 (Committee on Budget and Fiscal Review, Chapter 48, Statutes of 2022), which, effective July 1, 2022, changed the name of the department that was previously known as the Department of Fair Employment and Housing to the Civil Rights Department. In addition, SB 189 changed the name of the Fair Employment and Housing Council to the Civil Rights Council.

2. California Family Rights Act (CFRA)

On September 29, 2022, Governor Newsom signed AB 1041 (Wicks, Chapter 748, Statutes of 2022), which effective January 1, 2023, expands the list of individuals for whom an employee may take CFRA leave to care for to include at least one “designated person.” AB 1041 defines “designated person” as someone “related [to the employee] by blood or whose association with the employee is equivalent to a family relationship.”

3. Reproductive Health Decisionmaking

On September 27, 2022, Governor Newsom signed SB 523, the Contraceptive Equity Act of 2022 (Leyva, Chapter 630, Statutes of 2022), which takes effect on January 1, 2023. As relevant here, SB 523 adds “reproductive health decisionmaking” as a protective characteristic under the Fair Employment and Housing Act’s employment provisions. SB 523 states that “[r]eproductive health decisionmaking” includes, but is not limited to, a decision to use or access a particular drug, device, product, or medical service for reproductive health.”

Therefore, the Council proposes “changes without regulatory effect” to implement SB 189, AB 1041, and SB 523 through technical corrections through the Council’s regulations (California Code of Regulations, Title 2, Division 4.1, Chapter 5). The proposed regulations would be effective January 1, 2023 or upon filing with the Secretary of State, whichever is later, thus aligning the Council’s regulations with the statutory provisions that they implement.

Background

In accordance with its statutory mandate to “eliminate discrimination” in California, CRD receives, investigates, conciliates, mediates, and prosecutes complaints of alleged violations of numerous civil rights laws, including the Fair Employment and Housing Act (FEHA) (Gov. Code § 12900 et seq.), the Equal Pay

Act (Labor Code § 1197.5), the Unruh Civil Rights Act (Civ. Code § 51) (prohibiting discrimination by business establishments), Civil Code section 51.9 (prohibiting sexual harassment in professional relationships), the Disabled Persons Act (Civ. Code § 52.4) (guaranteeing people with disabilities full and equal access), the California Trafficking Victims Protection Act (Civ. Code § 52.5), the Ralph Civil Rights Act (Civ. Code § 51.7) (prohibiting violence and intimidation by threats of violence based on protected characteristics), and Government Code section 11135 et seq. (prohibiting discrimination in all State-funded activities and programs). Previously, the department was known as the Department of Fair Employment and Housing; effective July 1, 2022, the Legislature renamed the department to more accurately reflect its powers and duties (SB 189, Chapter 48, Statutes of 2022). Relatedly, SB 189 changed the name of the Council to the Civil Rights Council, also effective July 1, 2022.

FEHA's anti-discrimination and anti-retaliation provisions apply to employers with 5 or more employees, and its anti-harassment provision apply to all employers. Among other protections, FEHA prohibits discrimination and harassment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, sexual orientation, or military and veteran status. Effective January 1, 2023, SB 523 adds "reproductive health decisionmaking" as a protected characteristic under FEHA's employment provisions. FEHA applies to public and private employers, labor organizations and employment agencies. FEHA is enforced by CRD and through a private right of action.

Codified within FEHA at Government Code section 12945.2, CFRA provides, inter alia, that it is unlawful for a covered employer "to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period or who meets [certain other requirements], to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave."

CFRA applies to private employers with 5 or more employees and public employers. CFRA is enforced by CRD and through a private right of action. In 2020 and 2021, CFRA was expanded to include grandparents, grandchildren, siblings, adult children over 18, and parents-in-law as covered persons for whom employees could take CFRA leave. (SB 1383, Jackson, Chapter 86, Statutes of 2020; AB 1033, Bauer-Kahan, Chapter 327, Statutes of 2021.) Effectively January 1, 2023, AB 1041 amends the types of individuals for whom an employee can take CFRA leave to include a "designated person."

The Proposed Regulations Satisfy Code of Regulations, Title 1, Section 100

The Council's proposed regulations would update the existing regulations California Code of Regulations, Title 2, Division 4.1, Chapter 5 to accurately reflect SB 189, AB 1041, and SB 523's provisions. The Council proposes that these amendments be effective January 1, 2023 or upon filing with the Secretary of State, whichever is later. The Council proposes no substantive changes beyond what is required by SB 189, AB 1041, and SB 523. The Council exercised no discretion in putting forth these changes. These changes represent the only legally tenable interpretation of the statutory provisions they implement. Each proposed regulatory change is dictated by SB 189, AB 1041, and SB 523. Therefore, the proposed regulation satisfies Code of Regulations, Title 1, Section 100.

Proposed Regulatory Changes

Proposed regulatory change	Required by
<p>§11002 et seq. is amended to eliminate all references to the Department of Fair Employment and Housing and its abbreviated form, DFEH, the Fair Employment and Housing Council, and the website www.dfeh.ca.gov. The terms are replaced by Civil Rights Department, CRD, Civil Rights Council, and the website https://civildrights.ca.gov, respectively.*</p> <p><i>*These amendments are only included in the chart below if they are part of a subdivision that is being amended for an additional purpose.</i></p>	<ul style="list-style-type: none"> • SB 189 (Ch. 48, Stats. of 2022) (effective July 1, 2022) (changed the name of the “Fair Employment and Housing Council” to the “Civil Rights Council” and the “Department of Fair Employment and Housing” to the “Civil Rights Department”)
<p>§11002 Definitions. Unless a different meaning clearly applies from the context, the meaning of the words and phrases as defined in this section shall apply throughout this chapter:</p> <p>(a) “Council or FEH<u>CRD</u>” means the State Fair Employment and Housing<u>Civil Rights</u> Council created by section 12903 of the Government Code pursuant to Senate Bill 1038 (2011-2012 Reg. Sess.) (State. 2012, ch. 46) <u>and renamed pursuant to Senate Bill 189 (2021-2022 Reg. Sess.) (Stat. 2022, Ch. 48).</u></p>	<ul style="list-style-type: none"> • SB 189 (Ch. 48, Stats. of 2022) (effective July 1, 2022) (renamed Council)

<p>§11150. Definitions. <u>“CRC” means the Civil Rights Council created by section 12903 of the Government Code.</u> <u>“CRD” means the Civil Rights Department created by section 12901 of the Government Code</u> “DFEH” means the Department of Fair Employment and Housing as defined in Section 1413.1 of the California Labor Code.</p>	<ul style="list-style-type: none"> • SB 189 (Ch. 48, Stats. of 2022) (effective July 1, 2022) (renamed Council)
<p>§11087(a) <u>“Certification” means a written communication from the health care provider of the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, or designated person, or employee with a serious health condition to the employer of the employee requesting a family care leave to care for an aforementioned family member of the employee, or a medical leave for the employee’s own serious health condition.</u></p>	<ul style="list-style-type: none"> • AB 1041 (Ch. 748, Stats. of 2022) (effective January 1, 2023) (protected leave to care for “designated person” added to CFRA; “designated person” added to certification provision of CFRA)
<p>§11087(e) <u>“Designated Person” means any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employer may limit an employee to one designated person per 12-month period for family care and medical leave.</u></p>	<ul style="list-style-type: none"> • AB 1041 (Ch. 748, Stats. of 2022) (effective January 1, 2023) (definition of “designated person” added to CFRA)
<p>§11087(ij) <u>“Family care leave” means either:</u></p>	<ul style="list-style-type: none"> • AB 1041

<p>(1) Leave of up to a total of 12 workweeks in a 12-month period for reason of the birth of a child of the employee or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, and a guarantee of employment, made at the time the leave is granted, in the same or a comparable position upon termination of the leave; or</p> <p>(2) Leave of up to a total of 12 workweeks in a 12-month period to care for an employee’s child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, <u>or designated person</u> (sometimes referred to as “family members” in these regulations) who has a serious health condition, and a guarantee of employment, made at the time the leave is granted, in the same or a comparable position upon termination of the leave; or</p> <p>(3) Leave of up to a total of 12 workweeks in a 12-month period because of a “qualifying exigency,” as that term is defined in Unemployment Code section 3302.2, related to covered active duty or a call to covered active duty of an employee’s spouse, domestic partner, child, or parent in the Armed Forces of the United States</p>	<p>(Ch. 748, Stats. of 2022) (effective January 1, 2023) (protected leave to care for “designated person” added to CFRA)</p>
<p>§11087(jk) “Family member” means an employee’s child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, <u>or designated person</u>.</p>	<p>• AB 1041 (Ch. 748, Stats. of 2022) (effective January 1, 2023) (protected leave to care for “designated person” added to CFRA)</p>
<p>§11095(d) Text of Notice. The text below contains only the minimum requirements of the California Family Rights Act of 1993 and of the employer’s obligation to provide pregnancy disability leave. Nothing in this notice requirement prohibits an employer from providing a leave policy that is more generous than that required by CFRA and providing its own notice of its own policy. Covered employers may develop their own notice or they may choose to use the text provided below, unless it does not accurately reflect their own policy.</p> <p>FAMILY CARE AND MEDICAL LEAVE AND PREGNANCY DISABILITY LEAVE</p> <p>Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with us and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, and if we employ five or more employees, you may have a right to a family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care</p>	<p>• AB 1041 (Ch. 748, Stats. of 2022) (effective January 1, 2023) (protected leave to care for “designated person” added to CFRA)</p>

placement of your child or for your own serious health condition or that of your child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, ~~or~~ domestic partner, or designated person. While the law provides only unpaid leave, employees may choose or employers may require use of accrued paid leave while taking CFRA leave under certain circumstances.

Even if you are not eligible for CFRA leave, if you are disabled by pregnancy, childbirth or a related medical condition, you are entitled to take a pregnancy disability leave of up to four months, depending on your period(s) of actual disability. If you are CFRA eligible, you have certain rights to take BOTH a pregnancy disability leave and a CFRA leave for reason of the birth of your child. Both leaves contain a guarantee of reinstatement - for pregnancy disability it is to the same position and for CFRA it is to the same or a comparable position - at the end of the leave, subject to any defense allowed under the law.

If possible, you must provide at least 30 days' advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for yourself or of a family member). For events that are unforeseeable, we need you to notify us, at least verbally, as soon as you learn of the need for the leave. Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

We may require certification from your health care provider before allowing you a leave for pregnancy disability or for your own serious health condition. We also may require certification from the health care provider of your family member who has a serious health condition, before allowing you a leave to take care of that family member. When medically necessary, leave may be taken on an intermittent or reduced work schedule.

If you are taking a leave for the birth, adoption, or foster care placement of a child, the basic minimum duration of the leave is two weeks, and you must conclude the leave within one year of the birth or placement for adoption or foster care.

Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. If you want more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits, please contact _____.

§ 11097. Certification Form.

For leaves involving serious health conditions under CFRA or FMLA, the employer may utilize the following Certification of Health Care Provider form or its equivalent. Employers may also utilize any other certification form so long as the health care provider does not disclose the underlying diagnosis of the serious health condition involved without the consent of the patient.

FAIR EMPLOYMENT & HOUSING CIVIL RIGHTS COUNCIL

• AB 1041
(Ch. 748,
Stats. of
2022)
(effective
January 1,
2023)
(protected

CERTIFICATION OF HEALTH CARE PROVIDER

(California Family Rights Act (CFRA) or Family and Medical Leave Act (FMLA))

IMPORTANT NOTE: The California Genetic Information Nondiscrimination Act of 2011 (CalGINA) prohibits employers and other covered entities from requesting, or requiring, genetic information of an individual or family member of the individual except as specifically allowed by law. To comply with the Act, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic Information," as defined by CalGINA, includes information about the individual's or the individual's family member's genetic tests, information regarding the manifestation of a disease or disorder in a family member of the individual, and includes information from genetic services or participation in clinical research that includes genetic services by an individual or any family member of the individual. "Genetic Information" does not include information about an individual's sex or age.

1. Employee's Name:

2. Patient's Name (If other than employee):

Is patient the employee's family member (i.e., child, parent, grandparent, grandchild, sibling, spouse, ~~or~~ domestic partner, or designated person)?

(Note: "child" includes a biological, adopted, foster child, a stepchild, a legal ward, a child of the employee's domestic partner, and a person to whom the employee stands in loco parentis. "Parent" includes a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child. A biological or legal relationship is not necessary for a person to have stood in loco parentis to the employee as a child. "Designated person" means any individual related by blood or whose association with the employee is the equivalent of a family relationship.)

Yes No

3. Date medical condition or need for treatment commenced [NOTE: THE HEALTH CARE PROVIDER IS NOT TO DISCLOSE THE UNDERLYING DIAGNOSIS WITHOUT THE CONSENT OF THE PATIENT]:

4. Probable duration of medical condition or need for treatment:

5. Below is a description of what constitutes a "serious health condition" under both the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). Does the patient's condition qualify as a serious health condition?

Yes No

leave to care for "designated person" added to CFRA; "designated person" added to certification provision of CFRA)

6. If the certification is for the serious health condition of the employee, please answer the following:

Is employee able to perform work of any kind? (If "No," skip next question.)

Yes No

Is employee unable to perform any one or more of the essential functions of employee's position? (Answer after reviewing statement from employer of essential functions of employee's position, or, if none provided, after discussing with employee.)

Yes No

7. If the certification is for the care of the employee's family member, please answer the following:

Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety, or transportation?

Yes No

After review of the employee's signed statement (See Item 10 below), does the condition warrant the participation of the employee? (This participation may include psychological comfort and/or arranging for third-party care for the family member.)

Yes No

8. Estimate the period of time care is needed or during which the employee's presence would be beneficial:

9. Please answer the following questions only if the employee is asking for intermittent leave or a reduced work schedule.

Intermittent Leave: Is it medically necessary for the employee to be off work on an intermittent basis due to the serious health condition of the employee or family member?

Yes No

If yes, please indicate the estimated frequency of the employee's need for intermittent leave due to the serious health condition, and the duration of such leaves (e.g. 1 episode every 3 months lasting 1-2 days):

Frequency: _____ times per _____ week(s) _____ month(s) Duration: _____ hours
or _____ day(s) per episode

Yes No

Reduced Schedule Leave: Is it medically necessary for the employee to work less than the employee's normal work schedule due to the serious health condition of the employee or family member?

If yes, please indicate the part-time or reduced work schedule the employee needs: _____ hour(s) per day; _____ days per week, from _____ through _____

Yes No

Time Off for Medical Appointments or Treatment: Is it medically necessary for the employee to take time off work for doctor's visits or medical treatment, either by the health care practitioner or another provider of health services?

If yes, please indicate the estimated frequency of the employee's need for leave for doctor's visits or medical treatment, and the time required for each appointment, including any recovery period: Frequency: _____ times per _____ week(s) _____ month(s)
Duration: _____ hours or _____ day(s) per appointment/treatment

Yes No

ITEM 10 IS TO BE COMPLETED BY THE EMPLOYEE NEEDING FAMILY LEAVE. ****TO BE PROVIDED TO THE HEALTH CARE PROVIDER UNDER SEPARATE COVER.

10. When family care leave is needed to care for a seriously-ill family member, the employee shall state the care the employee will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced work schedule:

.....
.....
.....

11. Printed name of health care provider:

Signature of health care provider:

Date: _____

12. Signature of Employee:

Date: _____

-- Serious Health Condition --

“Serious health condition” means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental condition of the employee or a child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, ~~or~~ domestic partner, or designated person of the employee that involves either inpatient care or continuing treatment, including, but not limited to, treatment for substance abuse. A serious health condition may involve one or more of the following:

1. Hospital Care Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care. A person is considered an “inpatient” when a health care facility formally admits the person to the facility with the expectation that the person will remain at least overnight and occupy a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight.

2. Absence Plus Treatment

(a) A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

(1) Treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

3. Pregnancy [NOTE: An employee’s own incapacity due to pregnancy is covered as a serious health condition under FMLA but not under CFRA]

Any period of incapacity due to pregnancy or for prenatal care.

4. Chronic Conditions Requiring Treatment A chronic condition which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision A period of incapacity

<p>which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer’s, a severe stroke, or the terminal stages of a disease.</p> <p>6. Multiple Treatments (Non-Chronic Conditions) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).</p> <p>NOTE: Authority cited: Section 12935, Government Code. Reference: Section 12945.2, Government Code; California Genetic Information Nondiscrimination Act, Stats. 2011, ch. 261; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; and 29 C.F.R. § 825.</p>	
<p>§ 11006. Statement of Policy and Purpose. The public policy of the State of California is to protect and safeguard the civil rights of all individuals to seek, have access to, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, <u>sexual orientation, reproductive health decisionmaking, or military and veteran status</u>, and sexual orientation. Employment practices should treat all individuals equally, evaluating each on the basis of individual skills, knowledge and abilities and not on the basis of characteristics generally attributed to a group enumerated in the Act. The objectives of the California Fair Employment and Housing Act and these regulations are to promote equal employment opportunity and to assist all persons in understanding their rights, duties and obligations, so as to facilitate achievement of voluntary compliance with the law.</p> <p>NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920 and 12921(a), Government Code.</p>	<ul style="list-style-type: none"> • SB 523 (Ch. 630, Stats. of 2022) (effective January 1, 2023) (“reproductive health decisionmaking” added to protected characteristics under FEHA’s employment provisions)
<p>§ 11105. Nondiscrimination Clause. Each state contract and subcontract shall contain a nondiscrimination clause unless specifically exempted pursuant to section 11111. The governmental body awarding the contract may use either clause (a) or clause (b) below. Clause (a) will satisfy the requirements of section 12990 of the Government Code only; clause (b) contains language that will satisfy the requirements of both the Fair Employment and Housing Act and Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (adopted pursuant to Government Code sections 11135-11139.5). Standardized state</p>	<ul style="list-style-type: none"> • SB 523 (Ch. 630, Stats. of 2022) (effective January 1, 2023) (“reproduc

form OCP-1, containing clause (a), and OCP-2, containing clause (b), will be available through the OCP. These forms may be incorporated into a contract by reference and will fulfill the requirement of this section. The contracting parties may, in lieu of incorporating form OCP-1 or OCP-2, include the required clause in the written contract directly.

Clause (a)

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the ~~Fair Employment and Housing~~ Civil Rights Council implementing Government Code section 12990, set forth in Subchapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

2. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Clause (b)

1. During the performance of this contract, the recipient, contractor, and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

2. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§ 11135-11139.5), and the regulations or

tive health decisionmaking" added to protected characteristics under FEHA's employment provisions)

<p>standards adopted by the awarding state agency to implement such article.</p> <p>3. Contractor or recipient shall permit access by representatives of the <u>Civil Rights Department of Fair Employment and Housing</u> and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.</p> <p>4. Recipient, contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.</p> <p>5. The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.</p> <p>Note: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.</p>	
<p>§ 11122. Standard California Nondiscrimination Construction Contract Specifications. (Gov. Code, Section 12990.)</p> <p>In addition to the nondiscrimination clause set forth in section 11105, all non-exempt state construction contracts and subcontracts of \$5,000 or more shall include the specifications set forth in this section.</p> <p style="text-align: center;">STANDARD CALIFORNIA NONDISCRIMINATION CONSTRUCTION CONTRACT SPECIFICATIONS (GOV. CODE SECTION 12990)</p> <p>These specifications are applicable to all state contractors and subcontractors having a construction contract or subcontract of \$5,000 or more.</p> <p>1. As used in the specifications:</p> <p style="padding-left: 40px;">a. "Act" means the Fair Employment and Housing Act.</p> <p style="padding-left: 40px;">b. "Administrator" means Administrator, Office of Compliance Programs, California Department of Fair Employment and Housing<u>Civil Rights Department</u>, or any person to whom the Administrator delegates authority;</p> <p>2. Whenever the contractor or any subcontractor subcontracts a portion of the work, it shall include in each subcontract of \$5,000 or more the nondiscrimination clause in this contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.</p> <p>3. The contractor shall implement the specific nondiscrimination standards provided in</p>	<ul style="list-style-type: none"> • SB 523 (Ch. 630, Stats. of 2022) (effective January 1, 2023) ("reproductive health decisionmaking" added to protected characteristics under FEHA's employment provisions)

paragraphs 6(a) through (e) of these specifications.

4. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer members of any group protected by the Act shall excuse the contractor's obligations under these specifications, Government Code section 12990, or the regulations promulgated pursuant thereto. 5. In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.

5. In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.

6. The contractor shall take specific actions to implement its nondiscrimination program. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor must be able to demonstrate fully its efforts under steps a. through e. below:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which the contractor's employees are assigned to work. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligations to maintain such a working environment.

b. Provide written notification within seven days to the director of the ~~DFEH~~CRD when the referral process of the union or unions with which the contractor has a collective bargaining agreement has impeded the contractor's efforts to meet its obligations.

c. Disseminate the contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the contractor to meet its obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.

d. Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general

foremen, on-site foremen, etc., are aware of the contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.

e. Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the contractor's obligations under these specifications are being carried out.

7. Contractors are encouraged to participate in voluntary associations that assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on equal employment opportunity in the industry, ensures that the concrete benefits of the program are reflected in the contractor's workforce participation, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's.

8. The contractor is required to provide equal employment opportunity for all persons. Consequently, the contractor may be in violation of the Fair Employment and Housing Act (Government Code section 12990 et seq.) if a particular group is employed in a substantially disparate manner.

9. The contractor shall not use the nondiscrimination standards to discriminate against any person because race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

10. The contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code section 12990.

11. The contractor shall carry out such sanctions and penalties for violation of these specifications and the nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code section 12990 and its implementing regulations by the awarding agency. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code section 12990.

12. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee

<p>identification number when assigned, status, (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.</p> <p>Note: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.</p>	
<p>§§ 11105, 11140, 11150, and 11151 are amended to eliminate references to Government Code §11139.5 as this section was repealed effective January 1, 2017, by SB 1442 (Ch. 870, Stats. Of 2016).</p>	<ul style="list-style-type: none"> • SB 1442 (Ch. 870, Stats. of 2016) (effective January 1, 2017)